

NONPRECEDENTIAL

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

WYATT, V.I., INC.,)	
)	
Plaintiff)	
)	
and)	
)	CIVIL NO. 2002/0029
HOVENSA, L.L.C.)	
)	
Plaintiff-Intervenor)	
)	
v.)	
)	
GOVERNMENT OF THE VIRGIN)	
ISLANDS BY AND THROUGH THE)	
VIRGIN ISLANDS DEPARTMENT OF)	
LABOR, AND CECIL BENJAMIN IN HIS)	
OFFICIAL CAPACITY AS)	
COMMISSIONER OF THE VIRGIN)	
ISLANDS DEPARTMENT OF LABOR,)	
)	
Defendants)	
)	
and)	
)	
VIRGINIE GEORGE, MALCOM)	
MACCOW, EDGAR BARRIOS, and)	
CLAUDE GAINES,)	
)	
Defendants-)	
Intervenors)	
)	

APPEARANCES:

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MEMORANDUM OPINION

Finch, Chief Judge

This matter comes before the Court upon the motion of Plaintiff Wyatt, V.I., Inc. (“Wyatt”) for declaratory and injunctive relief prohibiting the Commissioner of the Virgin Islands Department of Labor from further seeking to prevent Wyatt’s use of an arbitration agreement in its contracts for employment.¹ For the reasons stated herein, the Court will grant Wyatt’s request for declaratory relief and will deny Wyatt’s request for a preliminary injunction.

I. Background

Wyatt, a Virgin Islands Corporation, is a contractor at the HOVENSA, L.L.C. oil refinery on St. Croix. In late 2001 Wyatt began accepting applications from persons interested in employment with the company. Since that time any applicant for employment at Wyatt has been required, as a condition of being considered for employment, to enter into a contract with Wyatt entitled “Dispute Resolution Agreement.” Under the Agreement, the prospective employee

¹ Since this action was filed, HOVENSA, L.L.C. has intervened as a plaintiff in this matter, and individuals by the names Virginie George, Malcom Maccow, Edgar Barrios and Claude Gaines have intervened as defendants.

waives his or her right to bring an employment dispute before the courts and agrees to submit any such dispute to binding arbitration.

On two occasions since Wyatt began requiring its applicants to sign the Dispute Resolution Agreement, Virgin Islands Commissioner of Labor Cecil R. Benjamin (“the Commissioner”) requested by letter that Wyatt cease and desist its use of the Dispute Resolution Agreement for the reason that the Agreement is in violation of Virgin Islands law, specifically the Virgin Islands Wrongful Discharge Act, 24 V.I.C. § 76. (See Letters from Commissioner dated December 20, 2002 and February 1, 2002, Pl. Ex. B and C.) When Wyatt failed to cease its use of the Agreement, the Department of Labor sought an Opinion Letter on the issue from the Virgin Islands Attorney General. The Attorney General issued an opinion letter to the Commissioner on March 1, 2002, stating:

The pre-employment dispute resolution agreement required by Wyatt, Inc. for prospective employees is in violation of 24 V.I.C. 76 [the Virgin Islands Wrongful Discharge Act], and is unconscionable, coercive, an adhesion contract, and is contrary to an important public policy in the Virgin Islands which recognizes the employment reality of an island economy.

(Opinion Letter, Pl. Ex. D at 3.) The Attorney General’s letter further stated:

We find that this case is ripe for injunctive and/or declaratory relief, and we shall proceed to seek such relief on behalf of the Department of Labor and the prospective employees of Wyatt.

Id. Following the issuance of the Attorney General’s Opinion Letter, the Commissioner informed Wyatt of his intent to prosecute should Wyatt fail to comply with the requests to cease and desist

use of the Dispute Resolution Agreement.²

Wyatt now brings the instant action for declaratory judgment and moves for injunctive relief seeking to prevent the Government from hindering Wyatt's use of the Dispute Resolution Agreement. Wyatt argues that the Agreement is valid and enforceable and that Wyatt has a right to enter into arbitration agreements under the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA").

II. Jurisdiction

After hearing arguments on the substantive issues raised by the parties, this Court requested briefing on whether it has subject matter jurisdiction. Wyatt argues that the Court has federal question jurisdiction based upon questions arising under the FAA, 9 U.S.C. §§ 1-16, and federal civil rights law, 42 U.S.C. § 1983.

Upon consideration of the parties' arguments, the Court is not satisfied that it has jurisdiction arising under the civil rights statute, 42 U.S.C. § 1983. "Neither the Territory of the Virgin Islands nor its officers acting in their official capacities are 'persons' under [Section 1983]," and thus neither may be subject to a claim under the statute. Brow v. Farrelly, 994 F.2d 1027, 1037 (3rd Cir. 1993) (citing Ngiraingas v. Sanchez, 495 U.S. 182, 192 (1990)). See also St. Thomas-St. John Hotel & Tourism Assn., Inc. v. Govt. of the Virgin Islands, 218 F.3d 232, 242 (3rd Cir. 2000) (declining to decide "whether territorial officials in their official capacities are 'persons' under § 1983 when sued solely for prospective injunctive relief). In the instant case,

² The Commissioner testified at the hearing on the matter that he notified Wyatt of his intent to bring charges.

the Commissioner is named only in his official capacity, and no evidence indicates that he was acting in an individual capacity under color of law in his interaction with Wyatt. Accordingly, the Virgin Islands Government, the Department of Labor and the Commissioner are not “persons” under the statute and, thus, they are not subject to suit under § 1983. Therefore, this Court’s jurisdiction cannot be grounded upon §1983.

With respect to federal question jurisdiction arising under the FAA, however, Wyatt argues that the statute, 9 U.S.C. § 2, provides a substantive federal right to enter into an arbitration agreement. Whereas Wyatt invokes the Supremacy Clause of the United States Constitution as the basis for declaring the Commissioner’s actions--and any Virgin Islands law prohibiting use of Wyatt’s Dispute Resolution Agreement--preempted by the FAA, the Court is satisfied that it has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 1612(a).³

III. Declaratory Relief

“The purpose of the Declaratory Judgment Act is to settle ‘actual controversies’ before they ripen into violations of law.” American Type Founders, Inc. v. Lanston Monotype Machine Co., 137 F.2d 728, 729 (3rd Cir.1943). Declaratory Relief is proper in order to clarify conflicting state and federal regulatory schemes and to determine the scope of each government’s authority, especially where a party faces a threat of liability if the application of federal law is not quickly made clear. Franchise Tax Bd. of State of Cal. v. Construction Laborers Vacation Trust for

³ The Revised Organic Act of the Virgin Islands provides that the “District Court of the Virgin Islands shall have the jurisdiction of a District Court of the United States” 48 U.S.C. § 1612(a).

Southern California, 463 U.S. 1, 22 (1983).

In the instant case, Wyatt faces a threat of liability if it continues to use the arbitration Agreement without a determination of its legality. The Commissioner himself testified that he intends to pursue legal action against Wyatt should the company continue its use of the Dispute Resolution Agreement. Further, the Opinion Letter issued by the Attorney General explicitly stated the Government's intent to seek relief on behalf of the Department of Labor. And while Virgin Islands officials find the Dispute Resolution Agreement contrary to local law, Wyatt argues its use of the Agreement is protected under the FAA. Accordingly, declaratory relief is proper in this case, and Wyatt is entitled to a ruling as to whether it may continue under federal law to require its applicants to sign the Dispute Resolution Agreement.

IV. Legality of the Wyatt Dispute Resolution Agreement

The Government through the opinion of the Attorney General argues that Wyatt's Dispute Resolution Agreement is "in violation of [the Virgin Islands Wrongful Discharge Act ("WDA"),] 24 V.I.C. 76, and is unconscionable, coercive, an adhesion contract, and is contrary to an important public policy in the Virgin Islands." Wyatt disputes those assertions, arguing that arbitration agreements in the employment context are valid and enforceable under the FAA. Wyatt further argues that if any conflict exists between the FAA and the WDA, the FAA preempts any conflicting Territorial law. Finally, Wyatt argues that no part of its Dispute Resolution Agreement is unconscionable, coercive, or gives rise to any concerns of fairness.

A. Arbitration Agreements in Employment

The Federal Arbitration act compels judicial enforcement of a wide range of written arbitration agreements. Circuit City Stores, Inc. v. Adams, 532 U.S. 105, 111 (2001). The FAA’s coverage provision, § 2, provides that arbitration agreements in general are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2.⁴

Arbitration agreements in the employment context are no exception to the general rule of enforceability. See Circuit City, 532 U.S. at 113, 123 (“We have been clear in rejecting the supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context.”); see also Great Western Mortgage Corp. v. Peacock, 110 F.3d 222, 226 (3rd Cir. 1997) (disagreeing with the argument that the FAA is construed to exclude mandatory arbitration of employment contracts). Further, the general enforceability applies not only to arbitration agreements in employment contracts, but also to such agreements in applications for employment. See Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 25 (1991) (enforcing arbitration agreement of registered securities representative pursuant to an agreement in his mandatory, pre-employment, securities registration application).

Where it is clear that the overwhelming tendency of federal law to favor arbitration

⁴ 9 U.S.C. § 2 provides in full:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

agreements extends to contracts of employment, this Court cannot find Wyatt's Agreement invalid by virtue of its employment context. The Court must therefore simply determine whether there is a special reason in this case to find Wyatt's arbitration Agreement unenforceable.

B. Conflict between the FAA and the Virgin Islands Wrongful Discharge Act; Preemption of Territorial Law

The Government argues that Wyatt's Dispute Resolution Agreement is in violation of the Virgin Islands Wrongful Discharge Act, 24 V.I.C. § 76. Wyatt disputes that claim, and argues that even if such a conflict existed between the Agreement and the WDA, the FAA favors enforcement of the Agreement and thereby would preempt any local law to the contrary.

"The FAA contains no express preemptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration." Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior Univ., 489 U.S. 468, 477 (1989). Nonetheless, it is well established that the FAA has a preemptive effect, albeit a narrow one. Great Western Mortgage Corp. v. Peacock, 110 F.3d 222, 230 (3rd Cir. 1997); see also Southland Corp. v. Keating, 465 U.S. 1, 10 (1984). The FAA preempts only state laws in direct conflict with arbitration provisions enforceable under the FAA, to wit, laws which "require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." Southland, 465 U.S. at 10. "[I]n the absence of a state law which discourages the enforcement of arbitration agreements, no question of preemption . . . is presented." Great Western Mortgage, 110 F.3d at 231.

In the instant case, the Government has shown no Territorial law or policy in direct conflict with the enforcement of Wyatt's Dispute Resolution Agreement. The Government cites

only the Virgin Islands Wrongful Discharge Act and general public policy in the Virgin Islands as the bases for disallowing Wyatt's use of arbitration agreements in its hiring procedures. The WDA, however, makes no mention whatsoever of the validity or enforceability of arbitration agreements in the Virgin Islands. See 24 V.I.C. § 76 *et seq.*. In fact, this Court has previously found that "[t]here is nothing in the [Wrongful Discharge Act] that precludes the use of arbitration. The WDA merely details what constitutes lawful and unlawful discharge. It does not favor judicial remedy over an arbitral one." Poole v. L.S. Holding, Inc., 2001 WL 1223748 (D.V.I. Aug. 20, 2001). The Government points to no other Virgin Islands law or policy, and the Court is aware of none, that is in conflict with the enforcement of Wyatt's arbitration Agreement under the FAA. In the absence of any local law directly discouraging the enforcement of arbitration agreements, no question of preemption is presented in this case. See id.

C. Unconscionability

Where no preemption issue exists, the Court is left to determine whether the waiver by a prospective Wyatt employee of his or her right to a judicial forum is enforceable under the FAA.⁵ Great Western Mortgage, 110 F.3d at 231. As discussed *supra*, federal law requires enforcement of agreements to arbitrate, as provided in § 2 of the FAA, unless the circumstances present any "grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2; see also

⁵The Court need not consider the validity of any waiver of substantive territorial-law rights aside from the waiver of the right to a judicial forum. It is established that "by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991).

Great Western Mortgage, 110 F.3d at 231.⁶ As grounds for invalidating Wyatt's Dispute

Resolution Agreement, the Government argues that the Agreement is unconscionable, coercive and contrary to public policy.

The Government points to nothing in particular about the Dispute Resolution Agreement that is objectionable on such grounds. Upon analysis of the Agreement, the court finds nothing triggering the Government's concerns.⁷ Wyatt's Dispute Resolution Agreement requires

⁶ Section 2 of the FAA subjects arbitration agreements, like other contracts, to challenges based upon "such grounds as exist at law or in equity for the revocation of any contract." The Court notes, however, that the Government is not a party to the arbitration Agreement in this case and, thus, the Government may not raise a contractually-based challenge to the Agreement. Nonetheless, because individual Defendants have joined in this action, and because the Government through the Department of Labor is entitled to examine employment relationships to ensure that employers comply with fundamental standards of fairness, the Court will consider the issues of unconscionability and fairness raised by the parties in this matter.

⁷The Dispute Resolution Agreement provides in full:

NOTICE TO ALL APPLICANTS

If you wish to be considered for employment with Wyatt V.I., Inc. ("Wyatt"), you must read and sign the following Dispute Resolution Agreement. Your application will not be considered until you have signed the Agreement. If you desire to do so, you may take this document with you to review. You must, however, return a signed copy of the Agreement with your application if you wish to continue the application process.

Dispute Resolution Agreement

I recognize that differences may arise between Wyatt and me in relation to my application for employment. Both Wyatt and I agree to resolve any and all claims, disputes or controversies arising out of or relating to my application or candidacy for employment or the terms and conditions of any offer of employment exclusively by final and binding arbitration before a neutral arbitrator pursuant to the American Arbitration Association's *National Rules for the Resolution of Employment Disputes*, a copy of which is available at www.adr.org or from Wyatt. By way of example only, some of the types of claims subject to final and binding arbitration include claims for an alleged wrongful decision not to hire me; claims for discrimination or harassment on the basis of age, race, religion, disability, national origin or other basis prohibited by state, federal, or territorial law; or claims for breach of any employment agreement or promises; and any claims for personal injury or property damage. This agreement extends to disputes with or claims against Wyatt V.I., Inc., HOVENSA, L.L.C., and any of their related or affiliated companies, entities, employees or individuals (as intended third party beneficiaries to this agreement).

AAA's National Rules will govern the allocation of costs and expenses except as otherwise agreed and set forth below. If I initiate arbitration by submitting a written claim to Wyatt's Arbitration Program Coordinator, I will be responsible for a \$50 filing fee payable to AAA. Wyatt will be responsible for the balance of the filing fee charged by AAA as well as AAA's daily administrative fees, the cost of the hearing location, and the compensation and travel expenses of the Arbitrator.

I understand that neither this agreement nor any other document executed during the application process guarantees employment or continued employment with Wyatt. I further understand that my signature to this

arbitration in compliance with the rules of the American Arbitration Association (“AAA”) in effect at the time of the arbitration. Under the Agreement, any arbitration must be conducted by a neutral arbitrator pursuant to the AAA’s National Rules for the Resolution of Employment Disputes. Further, the AAA itself has, by letter to Wyatt’s counsel, approved the Agreement for its compliance with AAA rules. The AAA’s letter reads:

As a matter of policy, if the Association determines that a dispute resolution program on its face substantially and materially deviates from the National Rules for the Resolution of Employment Disputes and the Due Process Protocol for Mediation And Arbitration of Statutory Disputes Arising Out of the Employment Relationship, the Association will decline to administer cases under that program.

Please be advised that the Association is prepared to administer cases filed under the Wyatt VI, Inc. plan as presently written.

(Letter of AAA Senior Vice President Robert E. Meade to Wyatt Counsel, Pl. Ex. E).

In addition to complying with the AAA arbitration rules, Wyatt’s Dispute Resolution Agreement treats all parties equally in that it requires both Wyatt and its employees to submit all claims arising from the employment relationship to binding arbitration. Wyatt has agreed to cover all costs of arbitration following the payment of a \$50 filing fee by the employee bringing a claim.

agreement in no way guarantees that Wyatt will accept my application for employment. Nothing in this agreement shall be construed as prohibiting me from filing an administrative charge of discrimination, an unfair labor practice charge, or other claim for relief with the Equal Employment Opportunity Commission, the National Labor Relations Board, Virgin Islands Department of Labor, or any other government administrative agency acting pursuant to federal, state, or territorial law.

Special Note: *This agreement and the other documents referenced above affect your legal rights. You should familiarize yourself with all rules and procedures before signing this Agreement. You may wish to seek legal advice before signing this agreement.*

By signing below, I agree to be bound to this Agreement. I understand that I must arbitrate all claims as described herein, that I may not file a lawsuit in court and that I am waiving my right to trial by jury on all claims encompassed by this agreement.

Further, no party to the Dispute Resolution Agreement must waive any substantive legal rights under the Agreement; instead the Agreement alters only the forum in which substantive claims are brought. There is nothing hidden or sneaky about the Agreement, as the terms are set forth in a document separate and detached from other employment papers. The Agreement urges prospective employees to seek legal advice concerning its terms. In light of these qualities, the Court finds no public policy concerns, unconscionability or coercion in the body of the Agreement.

Nonetheless, the Government further argues that because employment with Wyatt is expressly conditioned upon the employee signing Wyatt's arbitration Agreement, such a disparity in bargaining power exists that the Agreement is unenforceable as an adhesion contract. The Court disagrees. Mere inequality in bargaining power is not a sufficient reason to hold that an arbitration agreement in the employment context is unenforceable. See Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 33 (1991); Great Western Mortgage Corporation v. Peacock, 110 F.3d 222, 229 (3rd Cir. 1997). Moreover, an arbitration agreement is enforceable even where the signing of the agreement is a condition of employment. See Great Western Mortgage, 110 F.3d at 229 (upholding agreement in which the prospective employee allegedly accepted the agreement only because she was the weaker of the two parties to the employment contract). "[M]ore than a disparity in bargaining power is needed in order to show that an arbitration agreement was not entered into willingly." Id. Likewise, an arbitration clause is not adhesive in nature merely because there is a disparity in bargaining power. See Pritzker v. Merrill

Lynch, Pierce, Fenner & Smith, Inc., 7 F.3d 1110, 1118 (3d Cir.1993).⁸

In accordance with the foregoing established law, the Court does not find a disparity in bargaining power between Wyatt and its prospective employees sufficient to deny enforcement of the Dispute Resolution Agreement in this case. Nor is there unconscionability or coercion by Wyatt. Simply, there is no reason to find the Agreement unenforceable. Accordingly, the Court will grant declaratory judgment in Wyatt's favor.

V. Injunctive Relief

The Court having determined that Wyatt's Dispute Resolution Agreement is valid and enforceable, and granting declaratory relief to that effect, the Court now turns to the issue of injunctive relief. The determination of whether to grant a preliminary injunction rests with the discretion of the trial court. See Pappan Enterprises, Inc. v. Hardee's Food Systems, Inc., 143 F.3d 800, 803 (3rd Cir. 1998). When analyzing a motion for preliminary injunctive relief, the court must consider four factors: "(1) the likelihood that plaintiff will prevail on the merits at final hearing; (2) the extent to which plaintiff is being irreparably harmed by the conduct complained of; (3) the extent to which defendant will suffer irreparable harm if the preliminary injunction is issued; and (4) the public interest." Id. (citing S&R Corp. v. Jiffy Lube Int'l, Inc., 968 F.2d 371, 374 (3rd Cir. 1992)).

With respect to prong one of the preliminary injunction analysis, the Court has no doubt in

⁸ The Court finds that Wyatt's Dispute Resolution Agreement is not an adhesion contract in which parties are compelled by unequal bargaining power to accept unreasonable terms. Nonetheless, the Court notes that contracts of adhesion are not per se invalid. Dillard v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 961 F.2d 1148, 1154 (5th Cir. 1992).

light of the foregoing declaratory judgment analysis that Wyatt would prevail on the merits as to the validity of its Dispute Resolution Agreement. With respect to prong two, however, the Court finds no irreparable harm to support a preliminary injunction in this case. For the grant of a preliminary injunction to issue, the threatened irreparable harm to the plaintiff must be both present and not compensable by money damages. See Adams v. Freedom Forge Corp., 204 F.3d 475, 487 (3rd Cir. 2000) (citations omitted) (“The dramatic and drastic power of injunctive force may be unleashed only against conditions generating a presently existing actual threat.”); see also id. at 484-85 (“The irreparable harm requirement is met if a plaintiff demonstrates a significant risk that he or she will experience harm that cannot adequately be compensated after the fact by monetary damages.”).

In the instant case, the threat of irreparable harm alleged by Wyatt is not a “presently existing actual threat.” Wyatt continues to require its prospective employees to sign the Dispute Resolution Agreement. Despite the cease-and-desist letters issued by the Government, Wyatt has not been forced to hire any employee who has not signed the Agreement. Moreover, as of the issuance of the present declaratory judgment in Wyatt’s favor any further action by the Government is unlikely. Thus, any harm to Wyatt is speculative rather than present, and consists of the damages the company will incur if it is ever forced to cease its use of the Agreement or defend a lawsuit brought by the Government.

Further, the alleged irreparable harm is compensable by money damages. The testimony of Wyatt’s witnesses indicates that the company’s interest in requiring arbitration is primarily financial. As such, it appears that any further action by the Government may be remedied by an award of court fees and litigation costs to Wyatt. Should the Government bring suit to enforce

the Attorney General's position, enjoin use of the arbitration Agreement, or in any way attempt to deprive Wyatt of the arbitration forum, Wyatt may be adequately compensated for any resulting harm by an award of expenses. There is therefore no irreparable harm in this case.

While the possibility of further action by the Government to prevent Wyatt's use of the Dispute Resolution Agreement necessitates declaratory judgment, it does not as yet constitute irreparable harm for purposes of preliminary injunctive relief. This is not to say that Wyatt would not be entitled to injunctive relief should the Government continue to publicly declare Wyatt's actions unlawful following today's finding to the contrary. Presently, however, a continuation of the status quo will not work an irreparable harm on Wyatt. Accordingly, the Court will decline to grant injunctive relief at this time.

VI. Conclusion

For the foregoing reasons, the Court grants declaratory judgment in favor of Wyatt, and finds that Wyatt's Dispute Resolution Agreement is valid and enforceable. The Court declines to grant injunctive relief. An appropriate Order is attached.

ENTER:

Dated: June ___, 2002

RAYMOND L. FINCH
CHIEF U.S. DISTRICT JUDGE

Attest:
Wilfredo F. Morales

Clerk of the Court

By: _____
Deputy Clerk

cc: Charles E. Engeman, Esq.
David J. Comeaux, Esq.

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Honorable Jeffrey L. Resnick, U.S. Magistrate Judge